

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 17) Regulations 2020

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 17) Regulations 2020.

Mark Drakeford
First Minister

2 October 2020

1. Description

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the principal Regulations”).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. The Welsh Ministers are of the opinion that the requirements now being introduced are necessary and proportionate as a public health response to the current threat posed by coronavirus.

European Convention on Human Rights

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The continued adaption of the requirements made under the principal Regulations by these Regulations, is a proportionate response. These provisions balance the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of coronavirus, taking into account the scientific evidence.

The Regulations permit a single adult household in a local health protection area to form an extended household, with one other household in the same local health protection area. This will engage rights under Article 8 (right to respect for family and private life) and enable people greater enjoyment of this right, through the formation of extended households in such circumstances, therefore easing the current interference with those rights, which itself has been justified as pursuing the legitimate aim of providing a public health response to the threat posed by the increasing incidence and spread of coronavirus both in these areas and more widely and has been proportionate to that aim. The listing of ice rinks as open premises will similarly allow greater enjoyment of rights, particularly under Article 1 of the First Protocol.

3. Legislative background

The Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the 1984 Act.

The Explanatory Memorandum to the principal Regulations provides further information on these powers.

4. Purpose and intended effect of the legislation

The principal Regulations were made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

The local health protection areas, (LHPA[s]) were imposed to respond to rapid increases in Covid-19 cases in these areas based on scientific evidence, health advice and at the request of the local Incident Management Teams (IMTs). The principal Regulations were amended¹ with effect from 8 September 2020 to introduce restrictions in respect of an LHPA. This prohibited any household within such an area to be included within an extended household and prohibited the formation of any new extended household. This had the effect that existing extended households ended for individuals and families as soon as the area in which they were living became an LHPA.

These Regulations now provide that a single-adult household (for example a household with a lone parent) in a LHPA may agree to be treated as an extended household with one other household also in the same local health protection area.

In addition, these Regulations permit permanent ice rinks to re-open, subject to the duties to take reasonable measures to minimise risk of exposure to, and spread of, coronavirus, and make minor technical and consequential amendments to the principal Regulations.

The Regulations come into force on 3 October 2020.

It is critical to take all reasonable steps to limit the onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 30 January 2020 by the World Health Organisation, and steps are being taken worldwide to limit its transmission. The Chief Medical Officer for Wales together with the other Chief Medical Officers across the UK continue to assess the risks to public health stemming from coronavirus to be high.

The Welsh Ministers consider that introducing these amendments to the principal Regulations is proportionate to what the principal Regulations seek to achieve, which is to respond to a serious and imminent threat to public health.

¹ See the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 8) (Caerphilly) Regulations 2020 SI 2020/961 (W. 215)

5. Consultation

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

More widely, individuals and businesses have been informed about the restrictions through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales and me. Together with other Ministers and the Welsh Government, I have continued to update individuals and businesses throughout subsequent changes to the Regulations. I outlined the intention to make these changes in a statement to Members and a press conference held earlier today; the proposed changes have been widely reported by the media.

6. Regulatory and other impact assessments

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently as part of the ongoing response to a serious and imminent threat to public health.